

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

01/16/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000405

FILED: \_\_\_\_\_

STATE OF ARIZONA

ROGER KEVIN HAYS

v.

JASON A BURKE

ERIC SELLERS

MESA CITY COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

MESA CITY COURT

Cit. No. #753967

Charge: 1. DUI  
2. BAC .10 OR ABOVE W/IN 2 HRS OF DRIVING  
4. BAC OF .18 OR MORE W/IN 2 HRS OF DRIVING

DOB: 05/07/82

DOC: 02/05/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the time of oral argument on January 7, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Mesa City Court, the exhibits made of record and the Memoranda and oral argument of counsel.

The facts of this case indicate that Appellant, Jason A. Burke, was stopped by the Mesa Police on February 5, 2001 and accused of Driving While Under the Influence or Being in Actual Physical Control, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Having a Blood Alcohol Level Greater than .10 W/In 2 Hrs of Driving, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); Driving With an Amount of Alcohol W/In the Body by a Person Under the Age of 21 Years, a class 1 misdemeanor in violation of A.R.S. Section 4-244-33; and Extreme DUI, a class 1 misdemeanor in violation of A.R.S. Section 28-1382(A). Appellant had filed a Motion to Dismiss based upon the issue of "reasonable suspicion" by the police officers to make a stop of his vehicle and that motion was heard at an evidentiary hearing on May 14, 2001 by the Honorable Shellie F. Smith. The motion was denied at the conclusion of the evidentiary hearing. Thereafter, Appellant and Appellee submitted the case on the basis of departmental reports to the court. Appellant was found guilty of the charges. Appellant filed a timely Notice of Appeal in this case.

The only issue presented on appeal is whether the trial court erred in denying Appellant's Motion to Dismiss, wherein Appellant claimed that the police lacked a "reasonable suspicion" to stop his vehicle. Appellant claims that the Mesa police officers had no "reasonable suspicion" which would justify the stop of his vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from the

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facts, reasonably warrant the police officer's suspicion that the accused, committed, or was about to commit, a crime.<sup>1</sup> These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."<sup>2</sup> A.R.S. Section 13-3883(B) also provides, in pertinent part, authority for police officers to conduct an "investigative detention":

A peace officer may stop and detain a person as is reasonable necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.<sup>3</sup> In Whren<sup>4</sup>, the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the

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<sup>1</sup> Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1988); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

<sup>2</sup> United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed. 2d 621, (1981).

<sup>3</sup> Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

<sup>4</sup> Id.

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actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.<sup>5</sup>

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.<sup>6</sup> An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.<sup>7</sup> This Court must review those factual findings for an abuse of discretion.<sup>8</sup> Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.<sup>9</sup> This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.<sup>10</sup>

In this case the trial judge entered a detailed order denying Appellant's Motion to Dismiss. The trial judge stated:

I would have to agree with you to some extent that the horn honking as your client's car drove by and nothing else... your argument might flow then. But the fact is the horn honked and it drew the officer's attention. There were no other cars on the road. The officer then observed the Defendant's vehicle crossed three lanes of traffic, not once but twice before making its turn. And I would

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<sup>5</sup> Id.

<sup>6</sup> State v. Gonzalez-Gutierrez, 1987 Ariz. 116, 118, 927 P.2d 776, 778 (1996); State v. Magner, Supra.

<sup>7</sup> Id.

<sup>8</sup> State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

<sup>9</sup> State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

<sup>10</sup> State v. Gonzalez-Gutierrez, 187 Ariz. at 118, 927 P.2d at 778; State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

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agree in the characterization of that driving  
as erratic.<sup>11</sup>

The trial judge's ruling is supported by the record. Moving quickly across several lanes of traffic to make a turn twice is erratic driving. Thus, this Court determines *de novo* that the facts cited by the trial judge do establish a reasonable basis for the Mesa police officers to have stopped the automobile driven by the Appellant. The trial judge did not err in denying Appellant's Motion to Dismiss.

IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the Mesa City Court.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all future proceedings.

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<sup>11</sup> R.T. of May 14, 2001, at page 19.  
Docket Code 512